

Lesson Overview

This lesson describes exclusions granted to FEMA under the National Environmental Policy Act (NEPA).

Lesson Objectives

At the end of this lesson, you will be able to:

- Identify those FEMA actions that are **statutorily excluded** from NEPA review.
 - Identify those FEMA actions that are **categorically excluded** from NEPA review.
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National Environmental Policy Act

Now let's consider some of the special NEPA provisions available to FEMA.

Key Points

- Under NEPA, Federal agencies must consider the environment, but are not required to choose the alternative with the least environmental impact.
 - Congress has granted FEMA exclusions from NEPA for some of its actions.
 - Certain categories of actions are excluded from the NEPA review process.
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NEPA Outcomes

As discussed in the previous lesson, there are four possible outcomes of a NEPA review of a FEMA action.

- The action may qualify as a:
 - **Statutory exclusion** (STATEX), meaning that it is by law exempted from NEPA review.
 - **Categorical exclusion** (CATEX), meaning that it belongs to a category of actions that do not normally have a significant effect upon the environment and are excluded from further NEPA review.
 - If the action does not qualify as a STATEX or CATEX, it will require additional review and documentation, including either an:
 - **Environmental assessment** (EA), and/or
 - **Environmental impact statement** (EIS).
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NEPA Outcomes: STATEX and CATEX

In this lesson, we will consider the two most common outcomes: STATEX and CATEX.

Of all the FEMA-funded actions that are reviewed for NEPA applicability, approximately:

- 94% are STATEX.
- 5% are CATEX.
- 1% are subject to an EA or EIS.

The next lesson will discuss the EA and EIS process.

Statutory Exclusions - Section 316

Section 316 of the Stafford Act provides FEMA with a statutory exclusion from NEPA compliance. This STATEX exempts some FEMA actions from having to comply with NEPA.

This exclusion:

- Often applies to actions that are emergency in nature or are necessary for the preservation of life and property.
- Applies to most Individual Assistance and Public Assistance actions.
- Does not apply to hazard mitigation, flood mitigation, unmet needs projects, or any FEMA grant programs.

STATEX Actions (Screen 1 of 2)

The actions exempted by Section 316 are funded under the following sections of the Stafford Act and are typically emergency in nature:

| Section | Action |
|-------------|--|
| Section 402 | <ul style="list-style-type: none"> ▪ Utilization of personnel, equipment, supplies, technical and advisory services, etc., in support of disaster assistance. ▪ Assistance in support of medicine, food, and other consumable supplies and emergency assistance. |
| Section 403 | <ul style="list-style-type: none"> ▪ Use of Federal resources (equipment, supplies, facilities, etc.), medicine, food, and other consumables. ▪ Work and services to save lives and protect property (debris removal, search and rescue, clearance of roads, demolition of unsafe structures, warning of further risks and hazards, etc.). |

STATEX Actions (Screen 2 of 2)

Additional actions include:

| Section | Action |
|-------------|--|
| Section 406 | <ul style="list-style-type: none"> ▪ Restoration of a facility to its pre-disaster condition. In general, this means restoring the facility to the same function, capacity, and footprint. |
| Section 407 | <ul style="list-style-type: none"> ▪ Debris removal. |
| Section 502 | <ul style="list-style-type: none"> ▪ Utilization of personnel, equipment, supplies, technical and advisory services, etc., in support of disaster assistance. ▪ Assistance in support of medicine, food, and other consumable supplies and emergency assistance. |

Compliance With Other Laws

Although these emergency actions are statutorily exempted from the NEPA review process, they must still be reviewed for compliance with all other environmental laws, regulations, and Executive orders.

The major environmental laws and Executive orders will be discussed in later lessons within this module.

Does the Proposed Action Qualify as a STATEX?

Before any environmental review can take place, there must be an adequate description of the proposed action.

After all the applicable information has been gathered, the first question to ask is, "Does the proposed action fall under the sections noted in 316 and therefore qualify as a STATEX?"

- If the answer is **yes**, then NEPA does not apply, but the proposed action can only proceed after it has been reviewed for compliance with all other environmental laws.
 - If the answer is **no** (the proposed action is not a STATEX), a NEPA review is required.
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Categorical Exclusions

If an action is not a STATEX, the next level of review is the categorical exclusion, or CATEX.

Based on past experience, NEPA allows FEMA to develop and publish a list of categories of actions determined to typically have no significant effect on the environment. As a result, actions falling in these categories are generally excluded from further detailed review or documentation, such as an environmental assessment or environmental impact statement. This determination is called a CATEX. CATEXs developed in Department of Homeland Security (DHS) procedures are also available for FEMA's use.

The list of these categorical exclusions is found in 44 CFR 10.8(d)(2).

CATEX Levels of Documentation

While there are about 20 different categories of CATEX actions, FEMA has organized these actions into three groups based on the required level of NEPA documentation:

- Level 1 - No NEPA Documentation
- Level 2 - Notation
- Level 3 - Full Documentation

These are spelled out in FEMA's Policy Memo #5 (1997). Other documentation may be required under other laws.

Level 1 CATEXs

CATEX actions identified as Level 1 are of a day-to-day, administrative nature and generally have no potential to affect the environment.

These actions:

- Are administrative or related to training, procurement, or routine maintenance.
 - Are not generally associated with extraordinary circumstances. (Extraordinary circumstances will be discussed later in this lesson.)
 - Seldom trigger other laws.
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Actions Included Under Level 1 (Screen 1 of 2)

The categories of actions that require Level 1 review and documentation include:

- Administrative actions (e.g., personnel actions, travel, procurement of supplies). (44 CFR 10.8(d)(2)(i))
 - Preparation and revision of documentation. (ii)
 - Studies that involve no commitment of resources other than manpower and funding. (iii)
 - Inspection and monitoring activities to enforce standards or regulations. (iv)
 - Training activities and exercises using existing facilities, established procedures, and land-use designations. (v)
 - Procurement of goods and services to support emergency operation activities. (vi)
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Actions Included Under Level 1 (Screen 2 of 2)

Additional categories of actions included under Level 1 include:

- Acquisition or lease of existing facilities when the planned uses conform to past use or local land-use requirements. (vii)
 - Routine maintenance, repair, and groundskeeping activities at FEMA facilities. (x)
 - Planting of indigenous vegetation. (xi)
 - Granting of community-wide exceptions to floodproof residential basements. (xiv)
 - Listed planning and administrative activities in support of emergency and disaster response and recovery. (xviii)
 - Listed emergency and disaster response, recovery, and mitigation activities under the Stafford Act, including:
 - General Federal assistance.
 - Essential assistance.
 - Debris removal.
 - Temporary housing. (ixx)
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Level 1 Documentation

While CATEXs included in Level 1 require no NEPA documentation, when appropriate the following information should be part of the project record:

- Indication of the CATEX used.
 - Documentation of compliance with any other required law.
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Level 2 CATEXs

CATEX actions subject to Level 2 documentation are actions, which while project-oriented, generally have little potential to affect the environment.

Unlike CATEX actions requiring Level 1 documentation, those requiring Level 2 documentation may:

- Have certain extraordinary circumstances associated with a proposed action. (The nature of these extraordinary circumstances will be discussed shortly.)
 - Have an impact on historic properties (which will be addressed in Module 3).
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Actions Included Under Level 2 (Screen 1 of 2)

The categories of actions that require Level 2 review and documentation include:

- Acquisition of properties and associated demolition/removal when:
 - The acquisition is from a willing seller,
 - The buyer coordinated acquisition planning with affected authorities, and
 - The acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices. (44 CFR 10.8(d)(2)(vii))
 - Acquisition, installation, or operation of utility or communication systems that use existing distribution systems/facilities or currently used infrastructure rights-of-way. (ix)
 - Demolition or disposal of uncontaminated structures to permitted off-site locations. (xii)
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Actions Included Under Level 2 (Screen 2 of 2)

Additional categories of actions included under Level 2 include:

- Physical relocation of individual structures where FEMA has no involvement in the relocation site selection or development. (xiii)
 - Repair, reconstruction, restoration, elevation, retrofitting, or upgrading of structures to current codes and standards. (xv)
 - Replacement of any facility in a manner that substantially conforms to the pre-existing design, function, and location. (xv)
 - Actions conducted within enclosed facilities, including the installation of equipment (e.g., generators, sprinkler systems, emergency lighting). (xvii)
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Level 2 Documentation (Screen 1 of 2)

For CATEXs included in Level 2 documentation, the following information should be part of the project record:

- Indication of the CATEX used.
- Record of all consultations and agreements implemented to comply with the National Historic Preservation Act (NHPA) when historic properties will be affected.
- Documentation of compliance with any other required law.

(You will learn more about the NHPA in Module 3: Historic Preservation Review Process.)

Level 2 Documentation (Screen 2 of 2)

The following additional documentation must be considered:

- Indication that extraordinary circumstances were addressed.
 - An assessment of the likelihood that extraordinary circumstances present are associated with the proposed action or its location.
 - If, because of the nature or location of a particular action, an extraordinary circumstance is identified that could cause adverse effects, then the more thorough review and documentation as described for Level 3 will be required.
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Level 3 CATEXs

The final level of documentation is Level 3. A CATEX action documented under Level 3:

- Has potential to affect the environment.
 - May have extraordinary circumstances associated with the action.
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Actions Included Under Level 3

The only CATEX (44 CFR 10.8(d)(2)(xvi)) included under Level 3 is improvements to existing facilities and construction of small-scale mitigation measures in developed areas with infrastructure, when:

- The immediate project area has been disturbed.
- Basic functions are not altered.
- The capacity of other system components is not exceeded.
- The intended land use is not modified.
- The operation does not adversely affect the human environment.

This CATEX level is open to the broadest interpretation.

Level 3 Documentation

For a CATEX action identified as Level 3, the following documentation is required:

- Justification of the use of CATEX xvi. (Why does the project qualify for this category?)
- Discussion of extraordinary circumstances, if any.
- Documentation of compliance with any other required law and consultation with appropriate resource agencies.

For projects processed in the FEMA disaster database system, a narrative must be entered in the environmental comment field indicating that the CATEX conditions have been met.

Additional Considerations

When it is determined that an action fits a categorical exclusion, two additional questions must be answered:

- Do extraordinary circumstances exist?
- Are there other applicable environmental laws or Executive orders which have separate environmental requirements and considerations?

Once identified, extraordinary circumstances often indicate which additional environmental laws and Executive orders might be triggered.

Additional Considerations - Extraordinary Circumstances

An "extraordinary circumstance" is something about the nature or location of the proposed action that makes it substantially different from a typical action of its category.

- **CATEXs Under Level 1:** Very rarely involve extraordinary circumstances.
- **CATEXs Under Level 2 or 3:** May have one or more extraordinary circumstances. If these extraordinary circumstances have adverse effects that cannot be mitigated, the action may no longer qualify for an exclusion and an environmental assessment may need to be completed.

Extraordinary circumstances are defined in 44 CFR 10.8(d)(3). Some examples are presented on the next screens.

Extraordinary Circumstances (Screen 1 of 3)

Extraordinary circumstances are:

- Greater project scope and size than normally experienced. (For example, 200 acquisitions may not be extraordinary for a city, but would be extraordinary for a small town.)
 - High level of environmentally-based public controversy.
 - Potential to degrade already poor environmental conditions, especially when there is the potential for cumulative effects.
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Extraordinary Circumstances (Screen 2 of 3)

Additional extraordinary circumstances are:

- Use of unproven technology with potential adverse effects or involving unique or unknown environmental risks.
 - Presence of endangered or threatened species or their critical habitat with the potential to be affected by the action.
 - Presence of archeological, cultural, historical, or other protected resources with the potential to be affected by the action.
 - Presence of toxic or hazardous substances at levels exceeding Federal, Tribal, State, or local regulations or standards and requiring action or attention.
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Extraordinary Circumstances (Screen 3 of 3)

Additional extraordinary circumstances are:

- Potential to affect special status areas such as wetlands or coastal zones.
 - Potential for adverse effects on health or safety.
 - Potential to violate a Federal, Tribal, State, or local law or requirement imposed for the protection of the environment.
 - Potential for significant cumulative impact when the proposed action is combined with other past, present, and reasonably foreseeable future actions (private or governmental), even though the effects of the proposed action may not be significant by themselves.
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Additional Considerations - Other Environmental Laws

Even if an action is found to be exempt from NEPA (STATEX) or excluded from further NEPA review (CATEX), other environmental laws and Executive orders must still be followed.

These additional environmental laws and Executive orders will be explained in later lessons.

Does the Proposed Action Qualify as a CATEX?

If a given action was not exempt from NEPA review as a STATEX, the next question to ask is "Does the proposed action qualify as a CATEX?"

- If the answer is **yes**, then the level of documentation required must be determined.
 - If the answer is **no** (the proposed action is not a CATEX), the review must continue.
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Lesson Summary

You have now completed the second lesson in the Environmental Review section of this course. You should be able to:

- Identify those FEMA actions that are **statutorily excluded** from NEPA review.
 - Identify those FEMA actions that are **categorically excluded** from NEPA review.
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